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From: Marti.Bridges@deq.idaho.gov
Sent: Thursday, November 14, 2013 8:24 AM
To: Stewart, William C.
Subject: FW: ARTICLES: Water Quality Trading in the news . . .

FYI

From: Kirsch, Susan [mailto:skirsch@acwa-us.org]
Sent: Thursday, November 14, 2013 9:09 AM
To: Marti Bridges
Subject: ARTICLES: Water Quality Trading in the news . . .

To: TMDL/Watersheds Committee and TMDL Subcommittee

Below are two recent articles related to Water Quality Trading that may interest you . . .

Water Policy Report - 11/04/2013

National Water Quality Trading Network Aims To Release Guidance In 2014

Posted: November 1, 2013

A new national network of water quality trading stakeholders has defined the core components it will address in a best practices manual for dischargers seeking to trade water pollution credits in 2014 -- an effort intended in part to overcome vagueness and limits in EPA's current trading policy.

The group, known as the National Network for Consistency & Integrity in Water Quality Trading, met Oct. 22-24 at the Johnson Foundation's Racine, WI, headquarters to begin working on a best practices manual for water quality trading.

The network, which is facilitated World Resources Institute and the Oregon-based Willamette Partnership and was backed by the U.S. Department of Agriculture (USDA), the Electric Power Research Institute and the Johnson Foundation, met for the first time in May.

Its October meeting included participants from the sponsoring groups, as well as EPA, states, water utilities and others. Sources who attended the meeting said the group developed a set of approximately 12 "core components" that the members agreed should be addressed in the best practices manual.

The group plans to distribute the components to water quality trading participants nationwide in December, and is aiming to complete the best practices manual sometime in 2014 or early 2015.

Water quality trading is the practice where dischargers trade credits generated by reducing pollution below regulatory or other levels. It is one of a number of market-based mechanisms, including offsets, intended to provide alternative compliance mechanisms for dischargers. EPA's 2003 policy allows point sources to exceed permit limits if they buy "credits" for pollution reductions made elsewhere, often at farms and other nonpoint sources of pollution, where runoff can be reduced at a cost substantially less than what a wastewater treatment plant or other point source would face.

But the agency has largely left it to individual states to craft trading policies, envisioning the agency's role as advisory, which has posed challenges particularly in states that straddle large, multi-state watersheds, such as the Chesapeake Bay, where environmentalists are challenging the legality of water quality trading under the Clean Water Act.

"The group might be able to dig a little deeper than EPA can," says a wastewater industry source of the network, adding that the best practices manual would be a good opportunity "to dive deeper into some of the issues EPA purposely leaves kind of open."

Although a final list of the components was not yet available, according to sources with knowledge of the meeting, the components include what an applicant for trading credit must do to begin generating credits to enter a water pollution trading market; where trading can occur; whether there needs to be a regulatory load reduction plan, such as a total maximum daily load for trading to occur; how to

administrate trading projects; who should be responsible for the monitoring and verification of trading projects; and how long a line of credit should last.

"We didn't really get into a deep discussion on what the best option is for a baseline," a source with knowledge of the network says. "But more, when we talk about it, what do we actually mean? It's a way to capture and frame the conversation."

The wastewater industry source says the meeting revealed that coming up with a set of baselines would be "a much longer process than I thought it would be," because the stakeholders have all had a diverse range of experiences with water quality trading and there was a lack of common language around many trading issues.

The group also must grapple with what one source called the "fundamental challenge" of trading -- how to entice credit buyers to buy credits when they have full liability for the credits. For example, "if you are a municipality in Wisconsin, and you buy nutrient reduction from farmers, then you as the facility need to figure out [how to ensure] the nutrient reduction happens," the source says. This is different from other programs, such as wetland mitigation, where liability is transferred.

"If you look around, you have almost three times as many [trading] programs that have started a trade than have actually delivered a trade, and that has to do with both perceived and real liability," the source says.

In order to deal with the issue, credit buyers should have "eligibility criteria" in place to ensure they are only getting "the best project in the first place," and a system of verification where the buyer can check that the credit swap is performing as intended, the source adds. -- *Amanda Palleschi*

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Water Policy Report - 11/04/2013

Oregon Permits Highlight New Concerns With Water Quality Trading Efforts

Posted: November 1, 2013

EPA and environmentalists are raising concerns over permits proposed by Oregon regulators that allow local treatment plants to engage in water quality trading to comply with temperature standards, highlighting open policy questions about how states permit trading even as the agency faces questions over whether it has authority to authorize the practice.

In one recent case, the city of Wilsonville, OR, withdrew its request for Oregon's Department of Environmental Quality (DEQ) to modify its National Pollutant Discharge Elimination System (NPDES) permit to allow its wastewater treatment plant to engage in trading after EPA and environmentalists raised concerns that the proposed permit was inconsistent with agency policy.

EPA, for example, found that the trading provisions that DEQ included in the proposed permit revision lacked detail and questioned provisions allowing permittees to generate credits "retroactively" for projects that were completed for reasons other than to generate credits.

"The EPA requests that any credit-generating activities implemented prior to the permit modification be documented," an EPA Region X official said in a Sept. 11 letter to DEQ. "In addition, the permit language must be narrowed to provide credit for only those projects implemented for the purposes of generating credits." *Relevant documents are available on InsideEPA.com. (Doc. ID: 2451520)* Wilsonville's decision to drop its request for the permit revision forced the city to use cooling towers to comply with thermal limits. "The city has no desire that its modification application become the battleground for resolution of the larger issues raised by [Northwest Environmental Advocates (NWEA)]," the city wrote in an Oct. 15 letter to DEQ. "While the city would prefer to be environmentally responsible and use thermal credits, the city has a valid permit, and can meet our thermal load limit with cooling towers," the letter says.

However, an Oregon DEQ official says that the state "and others in the environmental community" don't believe that the cooling towers are best option for improving conditions for salmonids in the Willamette Basin.

And in an earlier case, NWEA in March warned EPA that an already effective permit for a treatment plant in Medford, OR, was inconsistent with both EPA's regulations and the Clean Water Act and urged the agency to review the state's thermal trading program. Among other things, the group said the Medford permit did not require trades to achieve greater environmental benefits than existing regulatory programs as EPA's policy requires and failed to provide reasonable assurances that nonpoint sources would control pollution in order to generate credits.

An environmentalist source says that although it is too late to legally challenge the trading program in the Medford permit, the group has met with EPA region officials, who are receptive to the issues raised in NWEA's letter: "There's a general view that Oregon needs to

have rules in place that govern trading in order to ensure that they do the trades properly and permittees who have trades done have some protection from complaints," the source says.

However, the source says that Oregon DEQ is "not motivated" to improve the way they are going about permitting, including trading, and this is "causing distress across the board."

The Oregon DEQ official says that "personally, I believe as many others do that the CWA is outdated and the litigious nature the act has created is preventing real change that could occur through legitimate water quality trading programs with demonstrable results."

The disputes in the Pacific Northwest signal concern over how trading is permitted even as EPA and trading supporters seek to fend off a threshold legal challenge from other environmentalists alleging that the agency lacks authority to authorize trading. Water quality trading occurs when dischargers trade credits generated by reducing pollution below regulatory or other levels, and is one of many market-based mechanisms, including offsets, intended to provide alternative compliance mechanisms for dischargers.

EPA last issued a trading policy in 2003, which generally allows point sources to exceed permit limits if they buy "credits" for pollution reductions made elsewhere -- often at farms and other nonpoint sources of pollution, where runoff can be reduced at a cost substantially less than what a wastewater treatment plant or other point source would face. EPA has left individual states to craft their own trading policies and has taken a largely advisory role in questions of trading policy, but this has raised doubts about trading among entities in different states.

Food & Water Watch and other groups are currently challenging the agency's proposed total maximum daily load for the Chesapeake Bay, arguing in part that the agency lacks authority to allow trading.

Faced with such questions, EPA has generally sought to maintain its current policy. The agency decided not to revise its 2003 policy, despite considering revisions as part of an Obama administration program intended to review and streamline existing regulatory programs.

But the permit challenges in Oregon show concern with how regulators are implementing current policies. For example, NWEA says generally that it does not oppose all water quality trading programs, but that the current permits under review lack specific details and appear to overstep the bounds laid out in EPA's 2003 guidance as well as its "Water Quality Trading Toolkit for Permit Writers" last updated in June 2009.

In its letter to EPA on the Medford permit, NWEA says EPA "has made clear since the inception of its trading policy" that trades between permitted NPDES point sources and nonpoint sources require baselines, which DEQ did not include in the Medford permit.

They cite the 2009 "toolkit" document as stipulating that a baseline for a nonpoint source can be derived from a TMDL or from state and local requirements or existing practices. However, NWEA says that a baseline cannot include reductions that nonpoint sources were already required to achieve, citing Pennsylvania and Washington state's "clear policies" on that issue.

"In stark contrast to these states and EPA guidance, Oregon has barely touched the issue," NWEA writes in its March 13 letter to Region 10 officials. "In its own trading guidance document, Oregon merely says that the baseline for nonpoint sources would be the pollutant load level associated with existing land uses and management practices that comply with existing state or local regulations."

Meanwhile, NWEA is also seeking information about a regional effort to develop a Joint Regional Agreement on water quality trading between EPA Region X, state departments of environmental quality, several non-profit groups and other water quality trading stakeholders.

The group is pursuing a series of Freedom of Information Act requests seeking information on the effort, which is being developed by the Willamette Partnership and The Freshwater Trust and has met several times in an effort to craft the regional effort. The Oregon DEQ source says that NWEA's letter on the Medford permit was "timed to coincide" with the start of the effort, which is funded through a \$1.5 million U.S. Department of Agriculture Conservation Innovation Grant to the groups to develop joint water quality trading protocols for the Pacific Northwest region. -- *Amanda Palleschi*

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